

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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JEFFREY J. BROWN,

Petitioner,

v.

Case No. 09-10852

BLAINE LAFLER,

Respondent.

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**OPINION AND ORDER DENYING PETITIONER'S MOTION FOR CERTIFICATE OF  
APPEALABILITY AND GRANTING PETITIONER'S APPLICATION TO PROCEED  
IN FORMA PAUPERIS ON APPEAL**

On December 14, 2010, this court issued an opinion and order dismissing the petition for writ of habeas corpus and declining to issue a certificate of appealability. See *Brown v. Lafler*, No. 2010 WL 5148498 (E.D. Mich. December 14, 2010). Petitioner filed a notice of appeal with the Sixth Circuit on January 14, 2011. On the same day, Petitioner filed a motion for a certificate of appealability and a motion to proceed *in forma pauperis* on appeal. For the reasons discussed below, the court will deny Petitioner's motion for a certificate of appealability but will grant the application to proceed *in forma pauperis* on appeal.

Having already declined to issue a certificate of appealability, the court receives Petitioner's motion as a motion for reconsideration. Eastern District of Michigan Local Rule 7.1(h) provides that a motion for reconsideration shall be granted if the movant can "demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled," and show that "correcting the

defect will result in a different disposition of the case.” E.D. Mich. LR 7.1(h)(3). Petitioner has presented nothing in his motion to demonstrate a palpable defect; instead, he has presented the same arguments already considered by the court in denying the habeas petition and declining to issue a certificate of appealability. A motion for reconsideration that presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Hence v. Smith*, 49 F.Supp.2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F.Supp. 951, 952 (E.D. Mich. 1997). Accordingly, the court will deny Petitioner’s motion for a certificate of appealability.

Petitioner also seeks leave to proceed *in forma pauperis* on appeal. *See* Fed. R. App. P. 24(a)(1). An appeal may not be taken *in forma pauperis* if the court determines that it is not taken in good faith. 28 U.S.C. § 1915(a)(3). Although the court has declined to issue a certificate of appealability in this case, the court cannot certify that the appeal is not taken in good faith. The court will therefore allow Petitioner to proceed *in forma pauperis* on appeal. Accordingly,

IT IS ORDERED that Petitioner’s “Motion for Certificate of Appealability” [Dkt. # 24] is DENIED.

IT IS FURTHER ORDERED that Petitioner’s application to proceed *in forma pauperis* on appeal [Dkt. # 23] is GRANTED.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: February 8, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 8, 2011, by electronic and/or ordinary mail.

s/Lisa G. Wagner  
Case Manager and Deputy Clerk  
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